

CIVIL RIGHTS AND ECONOMIC CITIZENSHIP: NOTES ON THE PAST AND FUTURE OF THE CIVIL RIGHTS AND LABOR MOVEMENTS

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Labor organizers often have historical insights that historians prize. Jack Getman's article in this Symposium describes a veteran organizer who summed up his work in this way: he was teaching the labor movement what he had learned from the civil rights movement which it had learned from the labor movement!¹ It is the last leg of this compressed history that interests me here. We tend to think that the civil rights movement originated in the 1950s, in the wake of *Brown v. Board of Education*.² But, as the organizer's shrewd insight suggests, the civil rights movement of the 1950s and 1960s actually had many roots in the labor movement of the 1930s and 1940s. The industrial unions created during the New Deal era and their federation, the Committee of Industrial Organizations ("CIO"), housed and fostered a remarkable civil rights movement. Half a million black workers joined CIO unions and thrust themselves into the vanguard of civil rights struggles. Those struggles, in turn, provided the seedbed for much of the leadership and many initiatives of the civil rights movement of the 1960s. These early struggles were not merely a dress rehearsal, however; the union-based civil rights movement of New Deal America was importantly different from the church-based movement of the sixties, not only in its institutional base, but also in its vision of equal citizenship. This largely forgotten era of civil rights history sheds light on key questions about the present and future of the civil rights and labor movements.

This Article will draw a brief historical sketch of the New Deal civil rights movement and its imprints on the 1960s. Using my own research and that of other historians of twentieth-century law, politics, and social movements, the Article will explore what Elizabeth Iglesias describes as the shadowy status of social and economic rights in contemporary political

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1. See Jack Getman, *The Fine Line Between Success and Failure in Strikes and Organizing*, 2 U. PA. J. LAB. & EMP. L. 719, 727 (2000).

2. 347 U.S. 483 (1954).

and legal discourse, and the need for activists and scholars to imagine alternative institutional forms and legal frameworks that might secure such rights.³ Events, initiatives, visions, and even rights talk, from the past cannot be transplanted into the present. Yet, the prescience of many 1960s civil rights and labor advocates about the problems of the present, their efforts to anticipate and avoid today's inter-racial rifts, and their surprisingly bold institutional alternatives may embolden us. The historical contingency of their successes and failures, and the counterfactual history that contingency invites us to imagine, also may inform our efforts and our analysis. Finally, I will suggest that some of the institutional obstacles that have impeded broad, inclusive social and economic rights in the past no longer obtain today. This is only partly a matter of moral progress; it is equally one of erosion and regression. Regardless of whether they operate to our detriment or our advantage the past's differences illuminate the uniqueness of the present and its possibilities.

I. THE RIGHTS RHETORIC OF NEW DEAL LIBERALISM

Demands for social and economic rights framed the language of New Deal reform. Whether one listened to union stump speeches or the president's radio addresses, read the bills before Congress and the debates surrounding them, or even attended the sessions of the American Law Institute, robust social and economic rights talk (and ideas for institutionalizing such rights) were everywhere.⁴ In the wake of mass unemployment, the right to decent work and a decent livelihood lay at the heart of this emerging conception of social and economic citizenship. The idea that government owes to every person a right to make a decent living harked back to the Gilded Age,⁵ but only during the New Deal did this idea and the more general conception of social citizenship that it anchored become the outlook of a national administration and a party in power. Along with the right to work and a right to livelihood went a right to social insurance and a right to a measure of economic independence and democracy. Always paramount was work, or what FDR's Committee on Economic Security, which drafted the Social Security Act of 1935, called employment assurance.⁶ Income security for those who could not work and

3. See Elizabeth M. Iglesias, *Institutionalizing Economic Justice: A LatCrit Perspective on the Imperatives of Linking the Reconstruction of "Community" to the Transformation of Legal Structures That Institutionalize the Depoliticization and Fragmentation of Labor/Community Solidarity*, 2 U. PA. J. LAB. & EMP. L. 773 (2000).

4. The following account draws on William E. Forbath, *Caste, Class and Equal Citizenship*, 98 MICH. L. REV. 1 (1999).

5. See *id.* at 26-61 (tracing the principle and its changing meanings from Reconstruction through the Progressive Era).

6. See H.R. DOC. NO. 81, 79 CONG. REC. 1, 546 (1935).

public employment for those who could not find decent jobs in the private economy had to become the "permanent policy of the government."⁷ A national guarantee assuring the "opportunity to make a living—a living decent according to the standard of the time" was at the heart of the new understanding of the word "liberty" that Roosevelt proclaimed during his 1936 reelection campaign.⁸

II. THE DIXIECRATS' NEW DEAL

To say this was the outlook of the Democratic Party in Congress, however, is to gloss over an important qualification. Hailing from an impoverished region with a populist tradition, most Southern Democrats were staunch supporters of the New Deal until the late 1930s. In exchange for their support, they insisted on decentralized administration, standardization of all labor measures, and on key bills' exclusion of the main categories of Southern Labor. Otherwise, how "were they going to get blacks to pick and chop cotton, when Negroes [on federal work programs] were getting twice as much as they had ever been paid" and when old-age insurance and social security bills had provisions that "would demoralize our region," until the Southern committee heads rewrote them.⁹

By allying with Northern Republicans, or by threatening to do so, they stripped the main pieces of New Deal legislation of any design or provision that threatened the separate Southern labor market and its distinctive melding of class and caste relations, its racial segmentation, and its low wages. Consider, for example, the Social Security Act. The Committee on Economic Security had crafted the administration's proposals for social security legislation to propitiate the Southerners. For that reason the proposals favored state-level autonomy—albeit with national minimum standards—in the unemployment insurance and assistance for the needy, aged, dependent children, and blind programs. Only the old-age benefits program would be purely federal.¹⁰ Yet, the Dixiecrats exacted more concessions from the congressional sponsors of the administration bill. National standards for

7. 79 CONG. REC. 9283, 9284 (1935) (remarks of Sen. Wagner).

8. Franklin D. Roosevelt, Acceptance of the Renomination for the Presidency (June 27, 1936), in 5 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 233 (Samuel I. Rosenman ed., 1938) [hereinafter PUBLIC PAPERS].

9. HARVARD SITKOFF, A NEW DEAL FOR BLACKS (1978) (quoting Senator Carter Glass); see also GAVIN WRIGHT, OLD SOUTH, NEW SOUTH: REVOLUTIONS IN THE SOUTHERN ECONOMY SINCE THE CIVIL WAR 219 (1986). Congressman "Cotton Ed" Smith commented, "Any man on this floor who has sense enough to read the English language knows that the main objective of [the Fair Labor Standards bill] is, by human legislation, to overcome the splendid gifts of God to the South." WRIGHT, *supra*.

10. See ARTHUR J. ALTMAYER, THE FORMATIVE YEARS OF SOCIAL SECURITY 14-15 (1968); FRANCES PERKINS, THE ROOSEVELT I KNEW 291 (1952).

unemployment and old-age insurance were dropped and the administration's commitment to include all employed persons in the unemployment and old-age insurance schemes was sacrificed. The price of Dixiecrat support included drumming out of the insurance programs agricultural and domestic workers—and thereby the majority of black Americans, who worked in these two occupations.¹¹

The AAA, the NRA, the National Labor Relations and Fair Labor Standards Acts were all tailored in this fashion. More encompassing and inclusive bills, such as those with national rather than local standards and administration, enjoyed solid support from the Northern Democrats (and broad but bootless support from disenfranchised southern blacks and poor whites). However, the Southern Junkers and their "racial civilization" exacted a price and FDR, willingly at first, paid up.¹² However, as the new industrial unions of the CIO and the black voters of the North loomed large in FDR's 1936 reelection bid and his social and economic rights talk grew more and more robust and universal, the southern attacks began. Governor Talmadge of Georgia convened a "Grass Roots Convention"¹³ to "Uphold the Constitution" against "Negroes, the New Deal and Karl Marx," while Senator Carter Glass of Virginia worried whether the white South "will have spirit and courage enough to face the new Reconstruction era that Northern so-called Democrats are menacing us with."¹⁴

The next few years brought more "interference." Minimum wage legislation, CIO organizing drives, rural poverty programs, and recurrent political initiatives and mobilizations among the disenfranchised, both white and black, began to undermine the political and economic sway of industrialists and Black Belt landowners. Early New Deal programs like the AAA had been tailored by local southern elites and their powerful representatives in Congress to pour aid into southern agriculture without upsetting the plantation system, but the inequities of these programs from tenants' and sharecroppers' perspectives sparked protests and national debate. CIO organizers, NAACP leaders, and progressive New Deal administrators lent support to grassroots movements like the biracial Southern Tenant

11. See ALTMAYER, *supra* note 10, at 35; PERKINS, *supra* note 10, at 296-301; Kenneth Finegold, *Agriculture and the Politics of U.S. Social Provision*, in *POLITICS OF SOCIAL POLICY IN THE U.S.* 199-234 (Weir et al. eds., 1998).

12. See generally JAMES T. PATTERSON, *CONGRESSIONAL CONSERVATISM AND THE NEW DEAL: THE GROWTH OF THE CONSERVATIVE COALITION IN CONGRESS 1933-1939* (1967) (discussing the formation of a congressional conservative coalition representing diverse constituencies all united against FDR's New Deal); SITKOFF, *supra* note 9 (noting that Southerners saw the New Deal as threatening the notion of states regulating their own racial affairs); Finegold, *supra* note 11; Ira Katznelson et al., *Limiting Liberalism: The Southern Veto in Congress, 1933-1950*, 108 POL. SCI. Q. 283 (1993).

13. SITKOFF, *supra* note 9, at 120.

14. *Id.* at 109.

Farmers Union.¹⁵

By the late 1930s, then, roughly half of the Southerners in the Senate voted consistently against FDR. Increasingly, roll call votes in both houses revealed Southern Democrats joining with Republicans to oppose administration measures in the areas of labor reform and social insurance.¹⁶ With the coming of World War II, FDR's gentleman's agreement with the Dixiecrats collapsed. The solid South redrew its lines of toleration toward New Deal reform, and southern Congressmen openly joined ranks with the minority-party Republicans to defeat those 1940s legislative programs and institutional reforms that looked toward completing the New Deal by enacting and implementing FDR's "second Bill of Rights."¹⁷ They gutted the administration's 1945 Full Employment Act and took the lead in abolishing the National Resources Planning Board.¹⁸ These programs would have laid an institutional foundation for active national labor market and full employment policies.¹⁹ The defeated and dismantled laws, agencies, and innovations were ones that would have sustained the public rhetoric and generated the new institutional capacities and commitments embodied in the

15. See SIDNEY BALDWIN, *THE RISE AND DECLINE OF THE FARM SECURITY ADMINISTRATION* (1968); DAVID CONRAD, *THE FORGOTTEN FARMERS: THE STORY OF SHARECROPPERS IN THE NEW DEAL* (1968); DONALD H. GRUBBS, *CRY FROM THE COTTON: THE SOUTHERN TENANT FARMERS' UNION AND THE NEW DEAL* (1971); EDWIN G. NOURSE ET AL., *THREE YEARS OF THE AGRICULTURAL ADJUSTMENT ADMINISTRATION* (1937); Lee J. Alston & Joseph P. Ferrie, *Resisting the Welfare State: Southern Opposition to the Farm Security Administration*, in *THE EMERGENCE OF THE MODERN POLITICAL ECONOMY* (Robert Higgs ed., 1985).

16. See SITKOFF, *supra* note 9, at 123-24; see also JILL QUADAGNO, *THE COLOR OF WELFARE* 1-23 (1994); Katznelson et al., *supra* note 12 (analyzing Southern Democrats' voting patterns in 89 Senate and 61 House roll call votes on critical New Deal bills and amendments).

17. RICHARD FRANKLIN BENSEL, *SECTIONALISM AND AMERICAN POLITICAL DEVELOPMENT: 1880-1980* 152-68 (1984); MARION CLAWSON, *NEW DEAL PLANNING: THE NATIONAL RESOURCES PLANNING BOARD* 283-332 (1981); BARRY DEAN KARL, *EXECUTIVE REORGANIZATION AND REFORM IN THE NEW DEAL* (1963); Katznelson et al., *supra* note 12.

18. For the most detailed legislative history of the administration's Full Employment Bill, see STEPHEN KEMP BAILEY, *CONGRESS MAKES A LAW: THE STORY BEHIND THE EMPLOYMENT ACT OF 1946* (1946). Bailey chronicles the efforts of Truman and his cabinet to pressure Congress into passing the administration's 1945 bill. He makes clear that the key players in gutting the bill were all Southern Democrats, in particular, Congressmen Carter Monasco of Alabama and Will Whittington of Mississippi. Their key positions on the Expenditures Committee, on the subcommittee that drafted the House substitute bill, as well as on the Conference Committee, enabled them to engineer "excluding from the final legislation what they considered to be dangerous federal commitments and assurances (including the wording of the title)," as well as the original bill's provisions for new planning and budget offices and capacities. *Id.* at 165; see also CLAWSON, *supra* note 17 (analyzing the National Resources Planning Board from its inception in 1933 through its dismantling in 1943).

19. See BAILEY, *supra* note 18; CLAWSON, *supra* note 17, at 283-332; KARL, *supra* note 17, at 145-78 (1963); MARGARET WEIR, *POLITICS AND JOBS* 134-89 (1992); Ira Katznelson & Bruce Pietrykowski, *Rebuilding the American State: Evidence from the 1940s*, 5 *STUD. AM. POL. DEV.* 301 (1991); Katznelson et al., *supra* note 12.

"all-important right to work," and the right "to train and retrain."²⁰

As a consequence, we have forgotten that New Dealers uniformly insisted that the "right to a decent, remunerative job" was "the very hub of social security"; that "employment assurance" was "paramount" over income transfers in the original architecture of the New Deal welfare state and all the major reports and proposals by New Deal cabinet commissions and congressional policy-makers from 1934 onward through 1946.²¹

III. A LABOR-BASED CIVIL RIGHTS MOVEMENT

Jim Crow stood between the popular support the New Deal vision of social citizenship enjoyed and its enactment into law. The era saw a sustained effort to oust him. Thus, Senator Glass of Virginia was not wrong. In the late 1930s and early 1940s a "new Reconstruction" did menace the South. The great migration of African-Americans from the rural South to the industrial cities of the North, which began during World War I, laid the foundation. By the late thirties the black vote was "important and sometimes decisive" in scores of Northern congressional districts,²² and black workers had become a significant part of the nation's industrial work force.²³ With the birth of the CIO, a new national labor organization welcomed black workers. During the 1930s blacks were central to union organizing throughout the nation—in southern metal and coal mining, longshore, and tobacco manufacturing as well as in northern auto, steel, and meatpacking. Equal rights for black workers was a defining demand of the new CIO, and friend and foe alike agreed that the new industrial unions would not have prevailed without the militant support they won from blacks.²⁴

If interracial unionism seemed strategically necessary, it also forced the

20. *Full Employment Bill: Hearings Before the Subcomm. on Banking and Currency on S. 380*, 79th Cong. 2, 4, 10, 59 (1945); see also PHILIP HARVEY, *SECURING THE RIGHT TO EMPLOYMENT: SOCIAL WELFARE POLICY AND THE UNEMPLOYED IN THE U.S.* (1989).

21. See 79 CONG. REC. 9283 (1935) (statement of Sen. Wagner); *Preliminary Report of the Staff of the Committee on Economic Security* (Sept. 1934), in 12 PUBLIC PAPERS, *supra* note 8, at 30; *Final Report of the Committee on Economic Security* (Jan. 15, 1935) in 12 PUBLIC PAPERS, *supra* note 8, at 1; *Address to the Congress on the State of the Union* (Jan. 7, 1943), in 12 PUBLIC PAPERS, *supra* note 8, at 21-34. See generally HARVEY, *supra* note 20, at 1-23.

22. HENRY LEE MOON, *BALANCE OF POWER: THE NEGRO VOTE 198* (1948); see also SITKOFF, *supra* note 9.

23. See, e.g., IRA KATZNELSON, *BLACK MEN, WHITE CITIES, RACE, POLITICS AND MIGRATION* (1976); NICHOLAS LEMANN, *THE GREAT BLACK MIGRATION AND HOW IT CHANGED AMERICA* (1991); SITKOFF, *supra* note 9, at 89-92.

24. See generally HORACE CAYTON & GEORGE MITCHELL, *BLACK WORKERS AND THE NEW UNIONS* (1949); NELSON LICHTENSTEIN, *THE MOST DANGEROUS MAN IN DETROIT: WALTER REUTHER AND THE FATE OF AMERICAN LABOR* (1995); HERBERT NORTHRUP, *ORGANIZED LABOR AND THE NEGRO* (1944); ROBERT ZEIGER, *THE CIO: A HISTORY* (1995).

CIO unions and their leaders to confront the question of what it means to be a union. Was it a matter of wages and workplace governance, or was the future of American apartheid also part of the union's agenda? One canny observer of New Deal politics concluded that the CIO's battle for black rights became "a vital symbol of the CIO's fight for equality for all Americans—especially in the minds of [southern European] immigrant workers."²⁵ How far did this symbolic identification with equal rights for black workers extend into practice? At a time when blacks and whites lived thoroughly segregated lives in both the North and South, the CIO unions provided virtually the only social institutions where blacks and whites interacted on a serious, non-superficial plane. CIO leaders and activists, black and white, led the era's battles not only for workplace equality, but for civil and political rights. The CIO white rank and file proved more ambivalent. Often ready to elect black shop stewards and union officers, and to support the use of union resources on behalf of civil rights organizing and legislation, white CIO workers in both regions waged "hate strikes" to protest their own unions' efforts to integrate all-white job categories. Yet, sometimes the same union local and plant saw impressive instances of white rank-and-file support for dismantling the color line at work.²⁶

Meanwhile, the traditional leaders of the cause of racial equality found the CIO an alarming upstart. From Detroit and Chicago to Winston-Salem and Birmingham, NAACP newsletters and board meetings bristled with misgivings about the "new crowd" of black union activists and their demands for a more militant civil rights program.²⁷ The NAACP, with its litigation and social work orientation and its middle-class leadership, seemed ill-equipped to act in the workplaces and working-class neighborhoods where black Americans fought their most decisive battles. Instead, it was the 500,000 black workers in the CIO who became the vanguard of civil rights contests. A study by one of the NAACP's chief foundation funders uneasily concluded, "the characteristic movements among Negroes are now for the first time

25. SAMUEL LUBELL, *THE FUTURE OF AMERICAN POLITICS* 91-93 (1945).

26. See generally JULIUS JACOBSON, *THE NEGRO AND THE AMERICAN LABOR MOVEMENT* 56-63 (1968); AUGUST MEIER & ELLIOTT RUDWICK, *BLACK DETROIT AND THE RISE OF THE UAW* (1979); Kevin Boyle, "There Are No Union Sorrows That the Union Can't Heal": *The Struggle for Racial Equality in the United Auto Workers, 1940-1960*, 36 LAB. HIST. 5 (1995); Robert Korstad & Nelson Lichtenstein, *Opportunities Found and Lost: Labor, Radicals, and the Early Civil Rights Movement*, 75 J. AM. HIST. 786 (1988); Bruce Nelson, *Class, Race and Democracy in the CIO: The "New" Labor History Meets the "Wages of Whiteness"*, 41 INT'L REV. LAB. HIST. 351 (1996); Thomas Sugrue, *Segmented Work, Race-Conscious Workers: Structure, Agency, and Division in the CIO Era*, 41 INT'L REV. LAB. HIST. 389 (1996).

27. See Beth Tompkins Bates, *A New Crowd Challenges the Agenda of the Old Guard in the NAACP, 1933-1941*, 102 AM. HIST. REV. 340, 345 (1997); Korstad & Lichtenstein, *supra* note 26, at 787-88. See generally ADAM FAIRCLOUGH, *RACE AND DEMOCRACY: THE CIVIL RIGHTS STRUGGLE IN LOUISIANA, 1915-1972* (1995); ROBIN D. G. KELLEY, *HAMMER AND HOE: ALABAMA COMMUNISTS DURING THE GREAT DEPRESSION* (1990).

becoming proletarian."²⁸ Similarly, a reporter for *Crisis*, the NAACP's national journal, observed that the CIO had become a "lamp of democracy" throughout the old Confederate states, stating, "The South has not known such a force since the historic Union Leagues in the great days of the Reconstruction era."²⁹

This movement gained much of its dynamism from the creative tension that arose between unionized black workers and the federal government—a relationship that Lichtenstein and Korstad compare to the one between the church-based civil rights movement and the national government two decades later.³⁰ *Brown v. Board* legitimated the protest movement and sit-ins of the early sixties, and the latter, in turn, lent political force and urgency to *Brown's* unfulfilled promise of racial equality. Likewise, the rise of inclusive industrial unions and the passage of New Deal labor legislation provided working-class blacks with a new standard to legitimate grass roots civil rights protests and demands for reform.

The "one man, one vote" policy implemented in thousands of National Labor Relations Board elections enfranchised black industrial workers who never before had voted or participated as rights-bearers in the public sphere. The new unions, in turn, offered black workers industrial citizenship, which involved participating in union governance and deliberating and deciding upon workplace grievances and broader goals. These experiences then combined with the patriotic egalitarianism of the New Dealers' war-time propaganda to generate a militant, rights consciousness among black workers, as powerful in many ways as that evoked by the Baptist spirituality of Dr. Martin Luther King, Jr., a generation later.

This consciousness was manifested in the labor-led voting rights movement across the South and in the leading black trade unionist A. Philip Randolph's "March on Washington for Jobs and Equal Participation in National Defense."³¹ In 1941 Randolph called on "Negro America" to march on the Capital because "if American democracy will not give jobs to its toilers because of race or color . . . it is a hollow mockery."³² Roosevelt responded

28. *Memorandum of Conferences of Alexander Johnson and Ebree on the Rosenwald Fund's Program in Race Relations*, in ROSENWALD FUND PAPERS, RACE RELATIONS FOLDER (June 27, 1942) (on file at Fisk University), quoted in Richard M. Dalfiume, *The "Forgotten Years" of the Negro Revolution*, 55 J. AM. HIST. 90, 100, n.47 (1968).

29. Harold Preece, *The South Stirs*, 48 CRISIS 318 (1941), quoted in Korstad & Lichtenstein, *supra* note 26, at 787.

30. See Korstad & Lichtenstein, *supra* note 26.

31. PAULA F. PFEFFER, A. PHILIP RANDOLPH, PIONEER OF THE CIVIL RIGHTS MOVEMENT 45-118 (1990) (noting that Randolph organized the march in 1941 for the twin aims of desegregation of the military and the opening of defense sector jobs to blacks. In exchange for Roosevelt's creation of the FEPC, Randolph cancelled the march. The idea behind the march—rallying in large cities—continued under Randolph through the March on Washington Movement).

32. A. Philip Randolph, *Call to Negro America*, n.d., in C. L. DELLUMS PAPERS, CARTON

by creating the Fair Employment Practices Committee (FEPC), which promised to end job discrimination in defense industries.³³ The first civil rights beachhead in the federal government since the Freedmen's Bureau, the FEPC was a weak agency, but its interracial staff conducted well-publicized hearings and investigations, exposing racist conditions and spurring on black protest.³⁴

Beginning in 1943, Randolph addressed rallies demanding a permanent FEPC to be organized "roughly like the NLRB" with similar authority to identify and adjudicate "violations of rights" and to "go to court if necessary." Like the NLRA, this law would secure "the right to work without demeaning discrimination." While the NLRA protected the "dignity of union membership and industrial democracy," the new law would protect the "dignity of fair employment."³⁵

Bills to transform the war-time FEPC into a permanent federal agency came before Congress in 1945, the same year that Congress took up the administration's Full Employment Act.³⁶ Both bills were cast as measures to enact FDR's "second bill of rights." The social right to a "job for all who can work," and the civil "right to seek work without discrimination"³⁷ were two sides of the same equation—both of them parts of the "economic rights of American citizenship," which, beginning in the early 1940s, were consistently declared by FDR as vested "regardless of race and color."³⁸ A year later, in 1946, the Dixiecrats defeated the civil right to work with filibusters and the social right to work by gutting the administration's bill in committee.³⁹

The defeat of these two core rights was no surprise to sober New Dealers. Eight years had passed since the solid South first stopped the New Deal's legislative engine in its tracks. Important nationally-based institutions

23. FOLDER: MARCH ON WASHINGTON (on file in Bancroft Library, U.C. Berkeley), *quoted in* Eileen Boris, *"The Right to Work Is the Right to Live": Fair Employment and the Quest for Social Citizenship* (unpublished manuscript on file with author).

33. See MERL E. REED, *SEEDTIME FOR THE MODERN CIVIL RIGHTS MOVEMENT: THE PRESIDENT'S COMMITTEE ON FAIR EMPLOYMENT PRACTICE, 1941-1946* (1991).

34. *See id.*

35. Daniel Bell, A. Philip Randolph Leads Drive for Permanent FEPC, *NEW LEADER*, Sept. 18, 1943, at 1.

36. *See* BAILEY, *supra* note 18.

37. 91 CONG. REC. A2882 (1945) (extension of remarks of Hon. Ellis E. Patterson of California).

38. Franklin D. Roosevelt, Campaign Address at Soldier's Field, Chicago, Illinois (Oct. 28, 1944), in 3 PUB. PAPERS, *supra* note 8, at 370; *see also* Franklin D. Roosevelt, Message to the Congress on the State of the Union (Jan. 11, 1944), in 13 PUB. PAPERS *supra* note 8, at 41 (hypothesizing "a second Bill of Rights . . . regardless of station, race or creed"); Franklin D. Roosevelt, Annual Message to the Congress on the State of the Union (Jan. 6, 1945), in 13 PUB. PAPERS, *supra* note 8, at 503 (reiterating "an American economic bill of rights").

39. *See* CLAWSON, *supra* note 17; REED, *supra* note 33, at 321-44; *see also* BAILEY, *supra* note 18 at 165-66.

and reformers had begun to assail the Solid South, realizing that the future of New Deal reform hinged on confronting Jim Crow.

In the summer of 1938, Roosevelt intervened in several primary elections in the South, hoping to defeat some of the most prominent reactionary Democrats. For the first time, he openly attacked the South's Congressional leadership for thwarting legislation that would reform the South's "low-wage economy" and its "feudal economic system."⁴⁰ The President met with success in "woo[ing] southern labor and tenant farmers into the camp of his new liberalism," as his southern foes observed.⁴¹ Nonetheless, the effort to unseat these foes was doomed by the fact that within the white primary, the poll tax and other restrictions kept most blacks and a majority of low-income whites (the "new liberalism's" constituency), from voting.⁴²

If it did not stop the conservative Democrats, FDR's campaign to elect southern liberals did help to galvanize the labor-based civil rights movement. The 1938 primaries led to the founding of the Southern Conference on Human Welfare (SCHW), a biracial coalition organized by southern trade unionists and civil rights activists and funded by the CIO to attack disenfranchisement and complete the liberal realignment of the Democratic Party.⁴³

More and more New Dealers agreed that completing the New Deal demanded overturning Jim Crow. 1944 brought the Supreme Court's decision in *Smith v. Allwright*,⁴⁴ declaring the all-white primary unconstitutional. This combined with an outpouring of money and black and white organizers by the CIO to produce an extraordinary voter registration drive in the South. In a few southern states like Alabama and Georgia, the number of black and poor white voters increased several fold. At a rally in Birmingham, Osceola McKaine, a black leader, recalled "those first bright days of Reconstruction

40. Franklin D. Roosevelt, A Fireside Chat on the Party Primaries (June 24, 1938), in 7 PUB. PAPERS, *supra* note 8, at 399.

41. PATRICIA SULLIVAN, DAYS OF HOPE: RACE AND DEMOCRACY IN THE NEW DEAL ERA 66 (1996).

42. See 7 PUBLIC PAPERS, *supra* note 8, at 399; SULLIVAN, *supra* note 41, at 66 (quoting the complaints of conservative southern Democrats). See generally RALPH J. BUNCHE, THE POLITICAL STATUS OF THE NEGRO IN THE AGE OF FDR 384-437 (Dewey W. Grantham ed., 1973).

43. "There is another South," SCHW President Clark Foreman proclaimed, "composed of the great mass of small farmers, the sharecroppers, the industrial workers white and colored, for the most part disfranchised [sic] by the poll tax and without spokesmen either in Congress, in their state legislatures or in the press." This latter South, he claimed, "was the great majority of the region's population." Were this majority mobilized and enabled to vote, he sanguinely prophesized, the South could become "the most liberal region in the Nation." Memorandum by Clark H. Foreman & James Dombrowski for the CIO Executive Board (Nov. 13, 1944), quoted in NUMAN V. BARTLEY, THE NEW SOUTH, 1945-1980 24 n.46 (1995).

44. 321 U.S. 649 (1944).

[when] the legislatures controlled by the newly freed slaves and the emancipated poor whites gave to our region its first democratic governments." "It was time, he said, for 'history to repeat itself.'"⁴⁵

McKaine's prophecy would not be realized. The fraud, intimidation, and violence that greeted the SCHW and the southern movement to revive the democratic promise of Reconstruction confirmed once more how dependent such a regional movement ultimately was on a national commitment to decisive action based on a broad interpretation of constitutionally protected civil and political rights. Presented with such a federal commitment, in the late 1930s or early 1940s, perhaps a majority of hard-hit white Southerners would have proved willing to forsake old political identities rooted in states' rights and white supremacy, and wager once more on the promised boon of social citizenship wedded to racial justice. But states' rights and white supremacy remained too deeply etched in the national government and party system from which such a commitment would have had to emerge.

The constitutional bad faith that for half a century enabled both parties and all three branches of the federal government to condone or support both Jim Crow and disenfranchisement produced the anomaly that was the reactionary core at the heart of FDR's New Deal liberal coalition. This excluded most of black America from the benefits of the main New Deal programs.⁴⁶ This same constitutional bad faith at black America's expense also deprived all Americans of the institutional foundations and ideological legacy of social citizenship.

Broad social and economics rights talk fell into disuse after the decisive defeats the New Deal agenda suffered in the 1940s. Blocked at every legislative crossroad, the CIO, social citizenship's only powerful, organized constituency, gradually abandoned its efforts to "complete the New Deal." By the mid 1950s the industrial unions had begun instead to fashion with

45. SULLIVAN, *supra* note 41, at 191 (quoting Osceola McKaine, the first black man to run for statewide office in South Carolina since Reconstruction, as he compared the current movement to democratize Southern politics to the Reconstruction era).

46. Moreover, it produced a system of social provision that would remain split along racial and class lines. Social Security originally embraced all three programs that fell within the scope of the 1935 Act. In other words, the aid program for dependent children (later AFDC) which, until 1996, we knew as "welfare" was part of social security. By the same token, FDR's "general welfare Constitution" and "general welfare state" embraced all of the New Deal social insurance programs, including contributory old-age insurance. Today, no politician would associate social security with the "welfare state."

Of course, FDR and the CES distinguished between social insurance and public assistance, but they also believed that within a generation, contributory old-age insurance and unemployment insurance combined with employment assurance would cover almost everyone and leave only a handful of people dependent upon public assistance. This belief was premised on the exclusion of most of black America from the nascent general welfare state. The illusion crumbled as soon as blacks won political rights and black poverty and unemployment gained urban visibility.

employers a *private* system of social provision and job security through collective bargaining in core sectors of the economy. During the same moment, the rigid consensus politics of the Cold War eclipsed the confident liberalism of New Deal America.

IV. THE CIVIL RIGHTS MOVEMENT AND THE "NEGROES' NEW DEAL"

Beginning with the Montgomery bus boycott in 1956 and culminating in the epic confrontation in Birmingham, the wave of sit-ins, demonstrations, and near-riots that swept the South and the nation in spring and summer 1963, the civil rights movement opened the door to reform for the first time since the 1930s.

Bayard Rustin was a lieutenant of A. Phillip Randolph during Randolph's 1941 March on Washington campaign and chief organizer of the 1963 March on Washington. In 1964 Rustin warned the Democratic National Convention that the "solution to our full citizenship" demanded more than "the Civil Rights Bill."⁴⁷ "What will [the Negro] gain by being permitted to move to an integrated neighborhood if he cannot afford to do so because he is unemployed . . . [W]hat advantage is it to the Negro to establish that he can . . . go into any establishment open to the public, if he is bound to [an economic] servitude?"⁴⁸

It was "essential" but insufficient "to outlaw discrimination in employment when there are not enough [jobs] to go around." "Civil rights," he told Congress the year before, "are built on" "the right to a decent livelihood" or they rest on sand.⁴⁹ Indeed, "it would be dangerous and misleading to call for enforcement of anti-discrimination measures without at the same time calling attention to the declining number of employment opportunities in many fields."⁵⁰ Rustin detailed the "displacement of lesser and unskilled workers" in the nation's "relatively high-wage heavy industries into which Negroes have moved since World War I" and the vast numbers of black workers cast aside each year by the "diminishing number of [decently paid unskilled and semi-skilled] jobs."⁵¹ Nor was displacement "confined to the cities," he went on, noting that "[m]echanization of agriculture" in the past decade meant that "as the great city minorities feel the pressures of increasing unemployment and poverty themselves, their numbers may be swelled by

47. Bayard Rustin, *Address to Democratic National Convention* (Aug. 1964), microformed on Bayard Rustin Papers, Reel 3, at 27 [hereinafter Rustin, *Address to Democratic National Convention*].

48. *Id.* at 21.

49. Bayard Rustin, *Draft for Testimony on FEP*, (Fall 1963), microformed on Bayard Rustin Papers, Reel 4, at 6-7 [hereinafter Rustin, *Draft for Testimony*].

50. *Id.* at 7.

51. *Id.* at 4.

other unskilled workers from the country."⁵² Rustin warned that "[w]e cannot have fair employment until we have full employment."⁵³

This insight also drove Martin Luther King to launch the Poor People's Campaign. King repeatedly told rallies, demonstrations, legislative hearings, and White House conferences that the full emancipation of blacks demanded a "contemporary social and economic Bill of Rights."⁵⁴ King's Bill, like FDR's, emphasized decent incomes, education, housing, and full employment.⁵⁵ The initiative that fleshed out King's Bill was the Freedom Budget for All Americans. Its prompting came from the November 1965 White House Civil Rights Conference, where King, Randolph and others underscored the inadequacy of the administration's anti-poverty programs. The programs provided job counseling but no jobs. They targeted black ghettos as a kind of "riot control" and fostered the "mischievous" notion that "the War on Poverty is solely to aid the colored poor."⁵⁶ Instead, King and Randolph proposed a Freedom Budget. The Freedom Budget was a "multi-billion dollar social investment to destroy the racial ghettos of America, decently house both the black and white poor, and to create full and fair employment in the process."⁵⁷ Randolph compared the idea to the "social investments of the New Deal," noting that the New Deal's labor legislation and public investments did more than provide jobs and foster collective bargaining. The investments also "evoked a new psychology of citizenship, a new militancy and sense of dignity" among white workers, as would the Freedom Budget among "millions of Negroes." The Freedom Budget would be "[their] New Deal thirty years late."⁵⁸

52. *Id.* at 5. Increasingly, then, where blacks found work at all, they found themselves "to an unusually high degree concentrated in poverty jobs: domestics, the janitorial occupations in the service trades, laundry workers, etc. These are people who often labor a full two thousand hours a year and who are, nevertheless, bitterly poor." Bayard Rustin, *Freedom Budget Article*, n.d., *microformed on Bayard Rustin Papers*, Reel 13 at 5 [hereinafter Rustin, *Freedom Budget Article*].

53. Rustin, *Draft for Testimony*, *supra* note 49, at 7.

54. MARTIN LUTHER KING, JR., *WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY* 193 (1967).

55. *See id.* at 163. King underscored the class-based character of his bill. "Any 'Negro Bill of Rights,'" he wrote, "based upon the concept of compensatory treatment as a result of the years of cultural and economic deprivation resulting from racial discrimination must give greater emphasis to the alleviation of economic and cultural backwardness on the part of the so-called 'poor white.' It is my opinion that many white workers whose economic condition is not too far removed from the economic condition of his black brother, will find it difficult to accept a 'Negro Bill of Rights,' which seeks to give special consideration to the Negro in the context of unemployment, joblessness, etc. and does not take into sufficient account their plight (that of the white worker)." DAVID GARROW, *BEARING THE CROSS* 312 (1986).

56. Rustin, *Address to Democratic National Convention*, *supra* note 47, at 27.

57. Rustin, *Freedom Budget Article*, *supra* note 52, at 1.

58. *Id.* at 9.

V. A DIFFERENT GREAT SOCIETY AGENDA ON EMPLOYMENT AND CIVIL RIGHTS

The same genre of full employment policies was pressed on Congress and the President by Walter Reuther and the industrial union wing of the AFL-CIO.⁵⁹ More strikingly, these policies found bold champions among the New Dealers in the Kennedy and Johnson administrations, and above all in Johnson's Secretary of Labor, Willard Wirtz. Wirtz and others waged a sustained battle against the partial and piecemeal social services/work counseling approach being adopted by the War on Poverty. Wirtz eloquently documented the "human slag heap" emerging in the nation's industrial regions, including its central cities where black unemployment already had begun to "explode." He urged regional and sectoral public investment, other incentives for job creation, and coordinated employment services and training.⁶⁰

When Randolph and King enlisted Leon Keyserling to lead a group of AFL-CIO, Department of Labor and academic economists charged with drafting a detailed program for the Freedom Budget, they assured the project's continuities with the New Deal, for Keyserling had been a principal architect of both the Wagner Act and the original 1945 Full Employment Bill.⁶¹ Keyserling minced no words about the War on Poverty's "purely 'casework' or 'welfare' approach." Keyserling wrote that the premise of that approach was that poverty sprang from "the personal characteristics of the poor."⁶² "Citing these characteristics as the major *cause* of poverty tends to 'blame' individuals, rather than the malfunctioning of the economy."⁶³ The latter, however, was the principal problem, and the solution lay in complex measures designed to improve the nationwide distribution of goods and services, and to attack the problems of technological unemployment and uneven growth as "interwoven with the assault on poverty."⁶⁴ This

59. See Korstad & Lichtenstein, *supra* note 26. See generally KEVIN BOYLE, *THE UAW AND THE HEYDAY OF AMERICAN LIBERALISM* (1995) (exploring organized labor's place in the postwar political order by analyzing the national political activism of one CIO union, the United Automobile Workers (UAW)).

60. See U.S. DEP'T OF LABOR, *What Is Structural Unemployment?* (Nov. 20, 1963), in *Administrative History of the Department of Labor*, Vol. III, Documentary Supp., Sec. III-B, Box 12, LBJ Library, at 3. See generally MARGARET WEIR, *POLITICS AND JOBS* (1992).

61. See Bayard Rustin, *Memo to Gerhart Colm, et al.*, (12/9/65), *microformed on Bayard Rustin Papers*, Reel 12; Profile of Leon Keyserling, Freedom Budget Press Release, *microformed on Bayard Rustin Papers*, Reel 12. For a detailed account of Keyserling's New Deal activities, see Kenneth Casebeer, *Holder of the Pen: An Interview with Leon Keyserling on Drafting the Wagner Act*, 42 U. MIAMI L. REV. 385-63 (1987).

62. LEON KEYSERLING, *PROGRESS OR POVERTY: THE U.S. AT THE CROSSROADS* 37 (1964).

63. *Id.*

64. *Id.* at 89.

demanding a "focus upon the *structure* of job opportunity" and the "rapid disappearance of unskilled and semi-skilled jobs throughout" the industrial economy.⁶⁵ At the same time, Keyserling warned, it would be "chasing a futility to expect that the hundreds of thousands, or even millions, of unemployed young people and Negroes can suddenly be brought up to such high levels of skills that they could be fitted into highly skilled jobs; and even if they were brought up to these levels, there would not be enough of these types of jobs for them."⁶⁶ Therefore, in addition to education and training, Keyserling championed "remolding the structure of job opportunity [so] that they can enter relatively unskilled jobs, and gradually progress to better jobs as they acquire more skills," and he outlined the kinds of public and private undertakings that could provide such opportunities.⁶⁷

Keyserling and Wirtz's ideas found a ready audience among many Democrats in Congress, who had been weaned on New Deal full employment economic ideas and ideals. In 1963 Senator Joseph Clark of Pennsylvania presided over eight months of hearings on proposed new fair employment practices legislation, aimed at re-enacting some version of the war-time FEPC. Like Keyserling and Wirtz, Clark and other Senate Democrats, including the powerful majority leader Hubert Humphrey, thought it plain that the problem of race discrimination in the nation's industries and workplaces could not be addressed independently from the factors Bayard Rustin had emphasized: the rapid disappearance of decently paid unskilled and semi-skilled industrial jobs combined with the exodus of rural blacks to the industrial cities of the South and North. On one hand, blacks were excluded by blunt race discrimination from many unskilled and semi-skilled industrial jobs as well as from the unions that controlled training and access to many skilled trades. On the other hand, eliminating every vestige of race discrimination would not qualify ill-educated and untrained African-Americans for skilled work in blue or white collar callings; nor would it remedy the lack of enough decently paid unskilled work. Senator Clark echoed the words of Rustin and Randolph: "[W]e will not have full employment until we have fair employment Government must take the leadership in manpower and employment problems."⁶⁸ Every black leader who appeared before Clark's committee concurred. Even the cautious Whitney Young had "no illusions that a complete absence of employment discrimination will . . . solve the problem of employment for many Negro

65. *Id.* at 97.

66. *Id.* at 95.

67. *Id.*

68. U.S. Senate, *Equal Employment Opportunity, Hearing Before the Subcomm. on Employment and Manpower of the Committee on Labor and Public Welfare*, 88th Cong. 175 (1963) (remarks of Sen. Clark) [hereinafter *Hearing Before the Committee on Labor*].

citizens."⁶⁹ Black civil rights spokesmen differed on the degree to which they defended racial preferences or advantages as necessary ingredients in the remedial arsenal; but not on the need for an expanded government role in ensuring adequate education, training, and employment opportunities.

Several equal employment opportunity bills were before the committee.⁷⁰ Not all of them addressed that need. Most were variations on the FEPC model, drawing on the experience of state-level FEPCs as well as on the federal government's war-time FEPC and the recently created President's Committee on Equal Employment Opportunity (PCEEO), which monitored compliance with Kennedy's 1961 executive order barring discrimination by government contractors. In broad strokes, all these bills barred discrimination in hiring and other employment decisions, all relied on private complaints, followed by efforts at conciliation on the part of the commission. The bills differed in their enforcement provisions. While some required complainants to initiate suit in federal district court, others equipped the federal agency with enforcement authority, making their orders reviewable by federal courts of appeal. One bill, Senate Bill 1937,⁷¹ sponsored by Humphrey and committee chair Clark, also gave the agency itself authority to initiate investigations and suits, independent of private complainants.

The Humphrey-Clark bill departed from the FEPC model in other ways, which linked it directly to the concerns of Rustin and Randolph, Wirtz and Keyserling. The bill was "geared," Humphrey told the committee, "to an economy vastly different from the one existing in the late 1940s when the initial state FEP commissions were created."⁷² The combination of vast technological changes in industry and agriculture with rising unemployment presented problems very different from those that existed when the first FEPCs were fashioned. As long as the unskilled and semi-skilled industrial workforce was expanding in the industries and regions where previous black gains had occurred, perhaps the "traditional concept of enforcing nondiscrimination in employment" was sufficient. But the decline of these traditional black jobs in the cities meant that black workers would have to broaden their horizons; and black social networks often did not reach growing sectors. The record of state FEPCs as well as the recent experience of the PCEEO revealed that the number and saliency of complaints did not reflect or spotlight broad barriers in the employment market.

[M]any of the problems . . . result from . . . practices not directly related to overt discrimination . . . [T]here are recruiting systems which never locate qualified Negro technicians [and] vocational

69. *Id.* at 177 (statement of Whitney M. Young, Jr.).

70. *See id.* at 2-92.

71. *See* S. 1937, 88th Cong. (1963).

72. *Hearing Before the Committee on Labor*, *supra* note 68, at 142.

high schools where Negro students are concentrated [which do not offer] salient courses T]rainees for new jobs are selected only from departments where Negroes have never worked. . . . In short, willful discrimination is often commingled with many impersonal institutional processes which nevertheless determine the availability of jobs for nonwhite workers.⁷³

Drafted by John Field, who had been director of the PCEEEO in 1961 and 1962, Senate Bill 1937 aimed to "operate simultaneously on two fronts": it would "fight all forms of job discriminations and restrictions based on race"; at the same time, it would "insure equal employment opportunity in an economic system where certain types of jobs are suddenly disappearing and other totally new categories of jobs are being created [by] viewing the employment process in its totality."⁷⁴ Senate Bill 1937 proposed to locate

an Equal Employment Opportunity Administration [EEOA] within the Department of Labor . . . enabling federal EEO officials to draw on the new manpower training programs, the regional efforts designed to stimulate additional job opportunities, the technical and analytical expertise of the Bureau of Labor Statistics and the inspection skills of the Wage and Hour Staff.⁷⁵

"[D]iscrimination," Field explained, "both present and inherited from the past can be dealt with only by coordinating anti-discrimination with the employment, training, manpower, and apprentice programs in the Department."⁷⁶ Under Senate Bill 1937, the Secretary and EEOA would not only investigate complaints, but also root out patterns of discrimination and exclusion. They would address both through a combination of enforcing anti-discrimination norms and coordinating job training and other programs.

The ambitious bill enjoyed not only Humphrey and Clark's backing, but also the support of the civil rights organizations that addressed the committee. No one expected any kind of FEPC legislation to be included in the omnibus civil rights legislation that Congress and the administration aimed to pass in 1963-64. There seemed, therefore, to be plenty of time to build up support for the new approach. The 1963 March on Washington kept the jobs question alive, but employment discrimination legislation was not its principle goal. The march, a project of Randolph's Negro American Labor Council, was aimed at underscoring the economic dimensions of racial justice, but King

73. *Id.* at 144-45 (statement of Sen. Humphrey).

74. *Id.* at 142.

75. *Id.* at 145.

76. JUDITH STEIN, *RUNNING STEEL* 77 (1998).

and other civil rights leaders rechristened it a March for Jobs and Freedom.⁷⁷ Among the speakers, only Randolph and the CIO's Walter Reuther raised employment issues, but many of the 200,000 marchers were from unions and carried placards urging "Jobs For All Now," "An FEPC Now," "Civil Rights Plus Full Employment Equals Freedom," and "Higher Minimum Wages."⁷⁸

It was the September 1963 bombing of the Sixteenth Street Baptist Church in Birmingham, where four young girls were killed, that brought a FEPC bill into the package.⁷⁹ This time the FEPC idea, which shaped the House bill, was the familiar one. Once the House bill was attached to the omnibus legislation in the wake of the Birmingham violence, keeping that bill on board became the key goal of civil rights advocates. Clark planned to substitute Senate Bill 1937 for the House version, but maneuvering the House package through the Senate took priority and required all the political capital its proponents could muster.⁸⁰ After Senator Everett Dirksen, a powerful Republican leader from Illinois, finished watering down Title VII, civil rights advocates concluded the weakened bill was disastrous, stripping the EEOC of any power to litigate and leaving the task of enforcement solely to private plaintiffs.

A year later, Humphrey tried to convince Johnson that Title VII required thorough revision, insisting that "the problems require much more than simply eliminating overt racial discrimination."⁸¹ Johnson was uninterested. Like Kennedy before him, Johnson preferred to listen to those economic advisors who assured him that tax cuts would spur economic growth and cure unemployment for both blacks and whites. These business-oriented Keynesians ignored labor economists like Keyserling and Wirtz with their supplier analyses of the changing structure of labor markets. Meanwhile, the civil rights community had come to see the EEOC as their beachhead and preferred to strengthen its enforcement powers rather than revisit more basic issues.

Thus, Title VII's anti-discrimination norm became enshrined as the civil rights movement's weapon for economic justice. When growth slowed after 1969 and measures like the War on Poverty proved puny or disposable, anti-discrimination became the only legal basis for attempts to increase black employment. NAACP Legal Defense Fund lawyers and liberal federal judges expanded the reach of the anti-discrimination norm and crafted ambitious remedial decrees during the seventies. Ironically, as Judith Stein has emphasized, this litigation most often was aimed at industries and plants unionized by the CIO. The unions had gained formal seniority

77. *See id.* at 80.

78. *Id.* at 80-81.

79. *See id.*

80. *See id.* at 77-82.

81. *Id.*

systems and promotion rules, and plaintiffs could seek and courts could build remedial schemes on the basis of these systems, merging segregated job pools and specifying quotas for advancement into skilled positions along promotion ladders that non-union firms lacked.⁸²

While sweeping on paper, the decrees did not halt the technological changes that led the jobs in contention to dwindle. Often too, the unions' efforts to find common ground and craft compromises between white and black workers' interests were undercut by the adversarial culture and industrial ignorance of plaintiffs' attorneys. Affirmative action, as it emerged out of Title VII litigation and other EEO contests, opened doors for many. However, affirmative action took training and employment institutions as it found them, as employers and private administrators had fashioned them. As Stein shows, this pitted black workers against white.⁸³

The Humphrey-Clark bill proposed to reform these institutions to expand training and employment opportunities for blacks and, at the same time, to broaden the base of work for blacks and whites alike, since both confronted a shrinking world of decent industrial jobs. By melding anti-discrimination enforcement with job training, apprenticeship, and public investment resources, the bill might have fostered a different and broader-gauged form of NAACP advocacy. The organization's attorneys would have been constrained to collaborate with labor economists and industrial policy-makers in ways that would have enlarged its reform horizons and institutional imagination, thrusting the organization into the arena of economic development and industrial policy, which it began seriously to enter twenty years later, in the eighties. By then, the limitations of anti-discrimination litigation for addressing black employment issues had become painfully apparent. However, by then, too, ambitious social reform was far from the national agenda; and the moment had passed when the civil rights movement enjoyed substantial moral and political leverage over Congress and the corporate elite.

To be sure, had Senate Bill 1937 become law, employers and unions confronted with Title VII suits demanding black access to scarce jobs could have tried to fob off such demands, insisting that the solution to racial exclusion lay in federal job training and job creation initiatives. Such responses, though, would not have satisfied a federal agency keen to prove its mettle as an engine of civil rights progress. More likely, the availability of federal resources would have been conditioned on integration of black workers into existing job and training opportunities. In that case, unions and civil rights advocates could have found common ground in their shared interest in maximizing the availability of new training and job

82. See STEIN, *supra* note 76, at 89-168.

83. See *id.*

opportunities. Thus, many conflicts over the legacy of racial exclusion would no longer have taken the form of zero-sum contests between black and white workers.

Consider a further and bolder counter-factual possibility. Its setting is the time from the late sixties through the mid-seventies when recession and galloping unemployment rates combined with high inflation to rule out the post-War period's standard, business-oriented Keynesian policy of tax cuts as the remedy for recession. This opened the political space for public job creation.⁸⁴ "Stagflation" was the rubric for this combination of economic ills; and while these ills lasted, public job creation and public service employment initiatives enjoyed broad support in Congress. The programs, however, were largely high-jacked by local governments, which often used them to substitute for public jobs funded at the local level, rather than enlarging the overall pool of decent work.⁸⁵ Meanwhile, efforts, like the Humphrey-Hawkins Full Employment Bill, to embed federal job creation in a more robust and sophisticated framework of employment policy commitments foundered for lack of robust support from labor, which remained the one organized constituency potentially powerful enough to push such a measure through Congress.⁸⁶ It is conceivable that several years of intense experience on labor's part contending and advocating with civil rights organizations for job training and job creation programs in dozens of communities and industries under Humphrey's version of Title VII would have served as a kind of institutional learning and strategy-and vision-shaping process. This process, in turn, could have engendered a base of support and a leadership more attuned to organized labor's interest in committing Congress to a more robust and concerted response to deindustrialization and the dwindling of high-wage, semi-skilled industrial jobs. Perhaps, then, a labor/civil rights alliance would have ushered in the right to decent work that eluded New Dealers' grasp a generation earlier.

Probably not, though. Enacting the costly and bold Freedom Budget/Humphrey-Hawkins Full Employment policies would have required national mobilization and coalition-building on a vast scale. It probably would have demanded a palpable threat of mass protest on the part of the poor and working class, black and white—a felt crisis of governability—sufficient to compel Congress to act and to give reformers in government something of the strategic mobility over against business they enjoyed in the 1930s. Otherwise, these structural economic reforms could not pass.

To be sure, Walter Reuther and other progressive labor leaders

84. See HARVEY, *supra* note 20, at 15; GARY MUCCIARONI, *THE POLITICAL FAILURE OF EMPLOYMENT POLICY, 1945-1982* 77-78 (1990); WEIR, *supra* note 19, at 101.

85. See MUCCIARONI, *supra* note 84, at 85-88; WEIR, *supra* note 19, at ch. 4.

86. See MUCCIARONI, *supra* note 84, at 93-104; WEIR, *supra* note 19, at 136-44.

supported the Freedom Budget/"Negroes' New Deal" vision; but not the AFL-CIO under George Meaney's wing, and not even Reuther's own constituents. Most of the latter, as Meaney pointedly observed, cared about the pensions, health plans, and job security measures in their union contracts, not about raising hell until government provided these things for everyone. Ironically, as Nelson Lichtenstein has shown, Reuther's own accomplishments had helped ensure that organized labor's grievances now came in more administrable packages.⁸⁷

Deindustrialization and blue-collar job losses happened slowly and unevenly, industry by industry and region by region. Even given the groundwork that experience under Senate Bill 1937 might have provided, the process was unlikely to bring on so dramatic a change in the political direction of organized labor nation-wide. Instead, it was a quiet kind of crisis, which intensified the resentments bred by affirmative action, without fueling any constructive political action; here, Senate Bill 1937 could well have made a modest, but still crucial difference. As we have already noted, Senate Bill 1937 would have provided the institutional resources and capacities to bring employers, unions, civil rights advocates, and federal administrators together—cooperating and contending over how to remedy racial exclusion from industrial jobs, in a fashion that elicited the most federal resources for jobs and job training. As the late 1960s and early 1970s ushered in a brief season of fairly ambitious job creation initiatives, the resources for such experiments would have grown. Thus, in particular places and industries around the country, examples would have arisen of racially integrated public/private experiments in what came to be called "high-wage strategies" for workers and communities dispossessed by economic "restructuring." The resources and support from government and employers surely would have diminished as the political climate grew colder. Even then, however, the experience would have bequeathed to labor and civil rights advocates a language of rights and remedies linking racial and economic justice in the fashion first forged by the New Deal era's civil rights movement. It would have shown us more about the capacities of government to encourage and coordinate such high-wage strategies and to bring the dispossessed into the economic mainstream. Today, we would possess some valuable counter-models to the prevailing bitterness among white workers regarding affirmative action and the prevailing fatalism about how industrial restructuring must proceed—with

87. See KEVIN BOYLE, *THE UAW AND THE HEYDAY OF AMERICAN LIBERALISM, 1945-1968* (1995); NELSON LICHTENSTEIN, *THE MOST DANGEROUS MAN IN DETROIT: A BIOGRAPHY OF WALTER REUTHER* (1996). Nor was Reuther's racial egalitarianism well-rooted in the white rank and file of CIO unions like the UAW. See Thomas Sugrue, *Crabgrass-Roots Politics: Race, Rights, and the Reaction Against Liberalism in the Urban North, 1940-1964*, 82 J. AM. HIST. 551 (1995).

rising inequalities and dwindling decent jobs in the midst of great affluence.

VI. CONCLUSION

In sum, then, this excursion into counterfactual history suggests that the tools of today's civil rights movement for addressing and attacking economic inequality are surprisingly contingent. At the same time, this contingency is not boundless. The gains won by industrial unions in the form of pensions, health plans, high wages and job security—a private system of social and economic rights embodied in collective bargaining agreements made under New Deal labor laws—meant that in the 1960s and 1970s organized labor was not prepared to do battle for such bold and costly new public commitments as Hawkins' Full Employment Bill.

Today, three decades later, however, this New Deal collective bargaining system has largely unraveled, and with it, the relatively generous private welfare state it undergirded for millions of organized workers in core industries. Sons and daughters of the steel and autoworkers of the 1960s and 1970s feel dispossessed of the social standing and security their parents enjoyed. Organized labor is groping for ways to retrieve those gains; it knows that doing so will require heavy lifting in the form of mass mobilization and broad-based solidarities across racial and ethnic lines. It has trained its sights on organizing the unorganized at the bottom of the economic ladder. Racial justice is high on labor's agenda, both for African-Americans and new immigrant workers. The particular policies and reforms championed in the 1960s and 1970s to wed racial and economic justice—or "fair" and "full" employment—may no longer obtain. What this history shows, though, is that the possibilities for remolding institutions and recasting rights talk are never predetermined and often renewed.